

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Jessica Z. Buttimer,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

CASE NO. 15-CV-856 JLS (BGS)

**ORDER GRANTING PLAINTIFF'S
MOTION TO PROCEED *IN*
*FORMA PAUPERIS***

(ECF No. 3)

Presently before the Court is Plaintiff Jessica Z. Buttimer's ("Plaintiff") Motion for Leave to Proceed *In Forma Pauperis* ("IFP"). (ECF No. 3.) Plaintiff, proceeding through counsel, has submitted a complaint for judicial review of a final decision of the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g). (ECF No. 1.)

MOTION TO PROCEED IFP

All parties instituting any civil action, suit, or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if she is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d

1 1176, 1177 (9th Cir. 1999). A federal court may authorize the commencement of an
 2 action without the prepayment of fees if the party submits an affidavit, including a
 3 statement of assets, showing that she is unable to pay the required filing fee. 28
 4 U.S.C. § 1915(a).

5 Here, Plaintiff states that she was last employed in 2013 making \$7 per hour,
 6 does not have a checking account, and receives General Relief in the amount of
 7 \$550 per month and food stamps. (ECF No. 3 at 2.) Further, Plaintiff has no
 8 savings or assets. (*Id.* at 2–3.) Taken at face value, Plaintiff’s application
 9 demonstrates that she is unable to pay the requisite fees and costs. Accordingly, the
 10 Court **GRANTS** Plaintiff’s Motion to Proceed IFP.

11 INITIAL SCREENING

12 Notwithstanding IFP status, the Court must subject each civil action commenced
 13 pursuant to 28 U.S.C. § 1915(a) to mandatory screening and order the sua sponte
 14 dismissal of any case it finds “frivolous or malicious,” “fails to state a claim on which
 15 relief may be granted,” or “seeks monetary relief against a defendant who is immune
 16 from such relief.” 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845,
 17 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to
 18 prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting
 19 that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte dismiss
 20 an IFP complaint that fails to state a claim).

21 Before its amendment by the PLRA, former 28 U.S.C. § 1915(d) permitted sua
 22 sponte dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1130.
 23 However, as amended, 28 U.S.C. § 1915(e)(2) mandates that the court reviewing an
 24 action filed pursuant to the IFP provisions of § 1915 make and rule on its own motion
 25 to dismiss before directing the U.S. Marshal to effect service pursuant to Federal Rule
 26 of Civil Procedure 4(c)(3). *See id.* at 1127; *Calhoun*, 254 F.3d at 845; *McGore v.*
 27 *Wrigglesworth*, 114 F.3d 601, 604–05 (6th Cir. 1997) (stating that sua sponte screening
 28 pursuant to § 1915 should occur “before service of process is made on the opposing

1 parties”).

2 “[W]hen determining whether a complaint states a claim, a court must accept as
3 true all allegations of material fact and must construe those facts in the light most
4 favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see*
5 *also Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005); *Barren v. Harrington*, 152
6 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2) “parallels the language of
7 Federal Rule of Civil Procedure 12(b)(6)”).

8 In this case, Plaintiff appeals the Commissioner’s decision denying Plaintiff’s
9 claim for disability insurance benefits. The Court finds that Plaintiff’s claim is
10 sufficiently pleaded to survive the sua sponte screening required by 28 U.S.C.
11 §§ 1915(e)(2). *See, e.g., Rhett v. Disman*, 228 Fed. Appx. 225, 227 (3d Cir. 2007)
12 (stating that “seeking review of the denial of supplemental social security disability
13 benefits” is sufficient to state a claim). Therefore, Plaintiff is entitled to U.S. Marshal
14 service on her behalf. *See Lopez*, 203 F.3d at 1126-27; 28 U.S.C. § 1915(d) (“The
15 officers of the court shall issue and serve all process, and perform all duties in [IFP]
16 cases.”); Fed.R.Civ.P. 4(c)(3) (“[T]he court may order that service be made by a United
17 States marshal or deputy marshal . . . if the plaintiff is authorized to proceed in forma
18 pauperis under 28 U.S.C. § 1915.”). Plaintiff is cautioned, however, that “the sua
19 sponte screening and dismissal procedure is cumulative of, and not a substitute for, any
20 subsequent Rule 12(b)(6) motion that [a defendant] may choose to bring.” *Teahan v.*
21 *Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

22 CONCLUSION

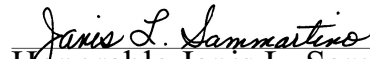
23 For the reasons stated above, the Court **GRANTS** Plaintiff’s motion to proceed
24 IFP pursuant to 28 U.S.C. § 1915(a). The Clerk shall issue a summons as to Plaintiff’s
25 Complaint (ECF No. 1) upon Defendant and shall forward it to Plaintiff along with a
26 blank U.S. Marshal Form 285. In addition, the Clerk shall provide Plaintiff with a
27 certified copy of this Order and a certified copy of her Complaint and the summons.
28 Upon receipt of this “IFP Package,” Plaintiff is directed to complete the forms as

1 completely and accurately as possible, and to return them to the U.S. Marshal
2 according to the instructions provided by the Clerk in the letter accompanying her IFP
3 package. Upon receipt, the U.S. Marshal shall serve a copy of the Complaint and
4 summons upon Defendant as directed by Plaintiff on the forms. All costs of service
5 shall be advanced by the United States. *See* 28 U.S.C. § 1915(d); Fed. R. Civ. P.
6 4(c)(3).

7 Defendant shall reply to the complaint within the time provided by the applicable
8 provisions of Federal Rule of Civil Procedure 12(a). Plaintiff shall serve upon
9 Defendant or, if appearance has been entered by counsel, upon Defendant's counsel,
10 a copy of every further pleading or other document submitted for consideration of the
11 Court. Plaintiff shall include with the original paper to be filed with the Clerk of the
12 Court a certificate stating the manner in which a true and correct copy of any document
13 was served on the Defendant or counsel of Defendant and the date of service. Any
14 paper received by a district judge or magistrate judge which has not been filed with the
15 Clerk or which fails to include a Certificate of Service may be disregarded.

16 **IT IS SO ORDERED.**

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18 DATED: April 20, 2015

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20 Honorable Janis L. Sammartino
21 United States District Judge
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